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Federal Reserve Board letter No. 98, August 26, 1968, from J. L. Robertson, Vice-Chairman, Board of Governors, Federal Reserve Board, reproduced in CCH Consumer Credit Guide ¶ 30,137

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-829

LEILA MOURNING, PETITIONER,

v.

FAMILY PUBLICATIONS SERVICE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 6a-23a) is reported at 449 F.2d 235. The opinion of the district court (Pet. App. 1a-5a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 27, 1971. The petition for a writ of certiorari was filed on December 23, 1971, and granted on March 20, 1972 (405 U.S. 987). The jurisdiction of the Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The United States will discuss the following questions:

1. Whether the Federal Reserve Board acted beyond its rulemaking authority under the Truth in Lending Act in promulgating the "four installment rule" of Regulation Z, which provides that any credit transaction payable in more than four installments is subject to the disclosure rules of the Act regardless of whether there is an identified finance charge involved in the transaction.

2. Whether the four installment rule creates a "conclusive presumption" regarding the imposition of finance charges that violates the due process clause of the Fifth Amendment to the Constitution.

CONSTITUTIONAL PROVISION, STATUTES AND REGULATIONS INVOLVED

The Fifth Amendment to the United States Constitution, the relevant provisions of the Truth In Lending Act, 15 U.S.C. 1601–1665, and the pertinent regulations of the Federal Reserve Board, 12 C.F.R. 226, are set forth in an Appendix to this brief, *infra*.

STATEMENT

Under the Truth in Lending Act, 15 U.S.C. 1601-1665, creditors who regularly extend "credit" involving finance charges[1] must disclose "to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed," 15 U.S.C. 1631

[1] 15 U.S.C. 1602(f).

(a), information such as the cash price, the amount of the down payment, the total amount to be financed, the amount of the finance charge, and the number and amount of payments required. 15 U.S.C. 1638(a); 12 C.F.R. 226.8. Since creditors could easily evade the Act's requirements by ceasing to identify the finance charge while inflating the "purchase" price,[2] and since the Federal Reserve Board has the duty of prescribing rules and regulations "to prevent circumvention or evasion" of the Act, 15 U.S.C. 1604, the Board's Regulation Z includes within the class of covered creditors any creditor who extends credit in a transaction where repayment, pursuant to an agreement, is or may be made in more than four installments. 12 C.F.R. 226.2(k).

Petitioner Leila Mourning brought this action in the United States District Court under the Act, 15 U.S.C. 1640, alleging that on August 19, 1969, she entered into a written contract with Family Publications Service, Inc. ("FPS") for the purchase of magazines; that in addition to her downpayment of $3.95 the contract obligated her to make thirty monthly payments of $3.95 each in return for a sixty months' subscription to four magazines; and that FPS failed to disclose the total purchase price of the magazines, the unpaid balance and other matters, as required by

[2] Federal Reserve Board letter, No. 86, August 26, 1969, from J. L. Robertson, Vice-Chairman, Board of Governors, Federal Reserve Board, summarized 1 C.C.H. Consumer Credit Guide ¶ 30,457. See also Federal Reserve Board letter, July 24, 1969, 1 C.C.H. Consumer Credit Guide, ¶¶ 30,113, 30,114; and note 22, *infra*.

Regulation Z, 12 C.F.R. 226.8 and the Act, 15 U.S.C. 1638.

On cross-motions for summary judgment the district court held that FPS had violated the Truth in Lending Act and Regulation Z by extending credit in a transaction involving more than four installment payments without making the required disclosures (Pet. App. 3a–5a). The court found that FPS had extended "consumer credit" within the meaning of the Act, 15 U.S.C. 1602; see 12 C.F.R. 226.2(k): FPS had given petitioner a sixty-month subscription in exchange for a promise to pay a specified sum in thirty monthly installments; the contract provided that it could not be cancelled and that failure to make monthly payments would render the entire balance due; and FPS itself considered the transaction to be a credit transaction (Pet. App. 4a). Pursuant to the Act's civil penalty provision, 15 U.S.C. 1640(a), the court awarded petitioner $100 together with attorney's fees of $1,500 (Pet. App. 5a).[3] The district court did not question the validity of the four installment rule in Regulation Z.

The court of appeals reversed, holding that the Board had exceeded its statutory authority in promulgating the four installment rule (Pet. App. 6a–23a).[4] In the court's view, the Act "requires that a finance charge must be found present, directly or indirectly,"

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[3] The civil penalty in actions brought by consumers is set by the Act at "twice the amount of the finance charge * * * except that the liability * * * shall not be less than $100 nor greater than $1,000." 15 U.S.C. 1640(a)(1).

[4] The court of appeals did not pass on the question whether FPS had extended credit as the district court found.

a transaction before the creditor is subject to the disclosure rules (Pet. App. 19a). But under the Board's four installment rule, disclosure is required "whether or not there is found in such transactions the imposition of a finance charge as an incident to the extension of credit" (*ibid.*). The court therefore held that the Act did not authorize the Board's regulation.

The court of appeals also held that the four installment rule created a "conclusive presumption" that a finance charge had been imposed, that such a conclusive presumption violates the due process clause of the Fifth Amendment, and that Congress itself thus could not have validly enacted the four installment rule. The court accordingly held the Board's rule void (Pet. App. 21a–23a).

INTEREST OF THE UNITED STATES

The court of appeals has invalidated a significant regulation designed to prevent evasion and circumvention by creditors of their obligations under the Truth in Lending Act. The Federal Reserve Board has the duty of promulgating rules and regulations, such as that involved in this case, in order to secure compliance with the Act, 15 U.S.C. 1604, and the Federal Trade Commission has general enforcement responsibilities under that Act,[5] 15 U.S.C. 1607(c).[6] Both agencies believe that the decision below will im-

[5] A violation of the Truth in Lending Act is a violation of the Federal Trade Commission Act, 15 U.S.C. 1607(c).

[6] Other federal agencies have specific enforcement responsibilities in limited areas. 15 U.S.C. 1607(a).

pair public and private enforcement of the Act[7] and will significantly impede full realization of the Act's goal of assuring "a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." 15 U.S.C. 1601.[8]

SUMMARY OF ARGUMENT

I

A.

Under the Truth in Lending Act, creditors who regularly extend credit involving a finance charge must disclose pertinent information to consumers in credit transactions where a finance charge is or may

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[7] Under 15 U.S.C. 1640, consumers may sue creditors for violations of the Act in any court of competent jurisdiction.

[8] On April 27, 1972, the Senate passed the Fair Credit Billing Act, S. 652, in which the four installment rule is included as an amendment to the Truth in Lending Act. The accompanying report, S. Rep. No. 750, 92d Cong., 2d Sess. 18 (1972), explains the provision's purpose as follows:

> This section applies the disclosure provisions of the TILA to creditors who levy no charge but who permit payment in four or more installments. The Board administratively promulgated the more-than-four installment rule to prevent any potential circumvention by creditors who might include a finance charge in their cash price. One court decision held the Board's rule exceeded its authority while another decision affirmed the Board's authority. The amendment thus clarifies the Board's power to issue such a regulation.

S. 652 is currently before the Consumer Affairs Subcommittee of the House Banking and Currency Committee.

is imposed. 15 U.S.C. 1602, 1631. There would be no difficulty in applying this provision to installment sales if creditors always differentiated the cost of credit from the price of the goods. However, some creditors simply pack credit costs into the selling price, thereby hiding the finance charge, which includes all charges incident to the extension of credit in addition to interest. 15 U.S.C. 1605(a).

This practice was often mentioned during the seven years of congressional hearings on the Act. Congress assumed that whenever credit had been extended "free of charge" this simply meant that the creditor had buried the finance charge in the price of the goods. Although Congress did not perceive any way of preventing this practice, it believed that the Act would nevertheless benefit consumers in "no-charge-for-credit" sales since creditors would still have to disclose information other than the finance charge, such as the cash price, the amount of downpayment, the number of payments, and the amount to be financed. This would enable consumers to shop on the basis of price even when they could not shop by comparing finance charges.

B.

It is against this background that the Board promulgated the "four installment rule" in its Regulation Z, which provides that where consumer credit is extended and where, pursuant to an agreement, the purchase price is payable in more than four installments, the creditor is subject to the Act's disclosure requirements.

12 C.F.R. 226.2(k).[8] The Board exercised its rule-making authority pursuant to Section 1604 of the Act, 15 U.S.C. 1604, after considering the recommendations of a representative advisory board and after receiving hundreds of comments and suggestions from industry and consumer groups and government agencies. Under Section 1604, the Board's regulation is valid if the resulting classifications or adjustments in the class transactions are, in the Board's judgment, necessary or proper to effectuate the purposes of the Act, to prevent evasion or circumvention of the Act, or to facilitate compliance with the Act.

As to the first of these independent grounds for rulemaking, the four installment rule effectuates the purposes of the Act by assuring that consumers will have the benefit of meaningful information from creditors even when finance charges are not identified. This fulfills the Act's goal of providing consumers with full information so they can better decide whether to enter into credit transactions. By making disclosure turn on whether more than four installments are involved, rather than on whether the creditor has in fact differentiated the cost of credit from the price of the goods, the Board's regulation ensures the Act will reach "no-charge-for-credit" vendors, which is consistent with Congress' assumption in this regard.

[8] The regulations define creditors subject to the Act as those who regularly extend "consumer credit," which includes transactions where the purchase price is payable in more than four installments. 12 C.F.R. 226.2(m).

C.

Moreover, the four installment rule is necessary and proper to prevent evasion of the Act. Without it, creditors could easily attempt to circumvent all of their disclosure obligations by hiding the finance charge in the selling price, thereby exempting themselves from coverage. 15 U.S.C. 1602(f), 1631, 1638. And this would mean that the less creditors tell their customers, the easier it would be for them to avoid compliance with provisions designed to give consumers full information.

Even if the four installment rule reaches credit transactions that the provisions of the Act themselves might not cover because there are in fact no finance charges involved directly or indirectly,[10] the Board validly promulgated the rule under Section 1604. When Congress authorized the Board to make adjustments in any class of transactions to prevent evasion, it must have intended to allow the Board to include transactions the provisions of the Act itself might, on their face, not reach.

D.

In addition, the Board's regulation is valid under Section 1604 because it facilitates compliance with the Act. Private civil actions are one of the primary methods of enforcing the Act. But if the actual existence of finance charges had to be shown before no-

[10] Congress, however, assumed that whenever credit is extended the costs necessarily incurred by the creditor are in fact passed on to the consumer despite the absence of an identified finance charge.

charge-for-credit vendors were required to disclose information, there would be endless legal disputes after the fact over bookkeeping practices and other matters foreign to the central purpose of providing the consumer with full information. Yet the Act is designed to relieve consumers of the burden of discovering undisclosed information; and disclosure is to be made before the transaction is consummated.

The four installment rule is intended to meet these problems. It provides consumers and creditors with an easily understandable rule to rely upon in no-charge-for-credit transactions. It ensures uniform application of the Act with respect to such transactions and facilitates compliance.

Since the Board's four installment rule is authorized under Section 1604, it should be upheld. We deal here with remedial legislation and with a regulation that is reasonably related to the purposes of the Act. *Thorpe* v. *Housing Authority*, 393 U.S. 268, 280–281. Furthermore, the regulation in question represents the Board's interpretation of the provisions and purposes of the Act, and that interpretation is entitled to great weight, especially since this is a new statute that the Board must set in motion through regulations. *Udall* v. *Tallman*, 380 U.S. 1, 16. The court below erred in holding that the Board had exceeded its authority.

II.

The court of appeals also erred in holding that the Board's regulation deprives creditors of due process in violation of the Fifth Amendment. The constitutionality of the four installment rule depends not on whether it establishes a "conclusive presumption" regarding the existence of finance charges, as the court below found, but rather on whether there is a rational basis for the regulation and whether it is reasonable in relation to the end sought to be achieved. *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379, 391; *Ferguson* v. *Skrupa*, 372 U.S. 726, 730–733. Under that standard, the regulation should be sustained. Even if some creditors in fact give "free" credit, the burden of requiring them to disclose is far outweighed by the benefits of the Board's prophylactic rule, which we have discussed above.

Thus, characterizing the Board's regulation as a "conclusive presumption" does not answer the question whether the substantive rule of law it represents is constitutionally valid. This Court, as well as the courts of appeals, have often upheld conclusive presumptions, which are simply a method of classifying. As we have stated above, with respect to economic regulation of business activity, due process requires only that the provisions at issue have a rational basis and be reasonable in view of the policies served. The four installment rule meets that test and the court below erred in holding otherwise.

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ARGUMENT

I.

THE FOUR INSTALLMENT RULE IS A VALID EXERCISE OF THE FEDERAL RESERVE BOARD'S RULE-MAKING AUTHORITY UNDER THE TRUTH IN LENDING ACT

Aside from constitutional questions, which we discuss separately below, this case turns upon whether the Board, in promulgating the disputed regulation, acted within its authority under 15 U.S.C. 1604, which provides that:

> The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

In our view, the four installment rule is a proper exercise of the Board's Section 1604 rulemaking authority and validly serves not simply one, but all three of the enumerated functions of rulemaking under that provision: it effectuates the purposes of the Act, it prevents evasion of the Act, and it facilitates compliance with the Act. Prior to dealing with these specific points, however, we shall discuss briefly the legislative history of the Act, to put the issues in proper perspective.

A.

THE LEGISLATIVE HISTORY OF THE ACT SUGGESTS THAT CONGRESS INTENDED THAT, EVEN IF SELLERS WERE NOT REQUIRED TO DISCLOSE FINANCE CHARGES HIDDEN IN THE SELLING PRICE, THEY NEVERTHELESS HAD TO COMPLY WITH THE ACT'S OTHER DISCLOSURE REQUIREMENTS

The Act itself requires a "creditor" to disclose pertinent information in a "consumer credit" transaction where a "finance charge" is or may be imposed. 15 U.S.C. 1631. To understand the applicability of this requirement, one must refer to the Act's definitions of the quoted words and phrases. "Creditor" means someone who regularly extends credit "for which the payment of a finance charge is required." 15 U.S.C. 1602(f). "Credit" is the right granted by a creditor to a debtor "to incur debt and defer its payment," 15 U.S.C. 1602(e), and the adjective "consumer" refers to transactions where the debtor is a natural person and the subjects of the transactions are primarily for personal, family, household or agricultural purposes. 15 U.S.C. 1602(h). "Finance charge" is not simply interest, but "the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit * * *." 15 U.S.C. 1605(a).

These statutory provisions thus contemplate that the Act's disclosure requirements apply to credit transactions involving finance charges and there would be no difficulty with respect to installment purchases if, in all such transactions, the charges for allowing

the consumer to pay over a period of time were identifiable or if the sum of the payments totalled more than the stated cash price of the goods purchased, which would indicate the presence of a finance charge. But what if the finance charge is buried in the installment price? (That is, the seller does not differentiate the cost of credit from the total selling price.) Of course, if the creditor then gives a "discount" for cash purchases this would be tantamount to charging a higher price for credit sales, or, in other words, a finance charge.[11] But suppose the creditor does not state a cash price or does little or no cash business so that such a comparison is not readily available. Should such creditors be able to escape all of the Act's disclosure requirements by merely refusing to identify finance charges and quoting to their customers only the amount of the monthly payment?

These questions highlight one of the major problem areas considered by Congress in the seven years of hearings on the Truth In Lending Act: the existing practice of burying finance charges in the selling price[12] and the possibility that this practice not only

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[11] See *Hearings on S. 1740 before a Subcommittee of the Senate Committee on Banking and Currency*, 87th Cong., 1st Sess. 57 (1961) (James Tobin, Member of Council of Economic Advisers: "[W]here the store says to a potential time customer, 'This is my price and there are no credit charges or the credit charges are very low'" and "he is at the same time saying to a potential cash customer, 'My price is really much lower than the one I am quoting for time customers,' then I think he is in violation of the bill.")

[12] Senator Proxmire, one of the co-sponsors of this legislation, estimated that in 1961 more than 50 percent of all retail merchants "concealed" their credit charges in the price of the

would continue but also would become more widespread if legislation required creditors to disclose information such as the cost of credit, the cash price for the goods sold, and the total installment price.[13] During the hearings, everyone assumed that "no charge for credit" simply meant that the creditor had "buried," "concealed" or "packed" finance charges in the price of the goods sold.[14] And there are indications in the hearings that the provisions of the pending legislation might not, in themselves, forbid creditors from doing this.[15]

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goods. *Hearings on S. 1740 before a Subcommittee of the Senate Committee on Banking and Currency*, 87th Cong., 1st Sess. [illegible]–390 (1961).

[13] See, *e.g.*, *Hearings on S. 1740 before a Subcommittee of the Senate Committee on Banking and Currency*, 87th Cong., 1st Sess., 49, 57, 127, 389–390, 447–448, 563, 999–1000 (1961); *Hearings on S. 1740 before a Subcommittee of the Senate Committee on Banking and Currency*, 87th Cong., 2d Sess. 16, 45, [illegible]–361, 366 (1962); *Hearings on S. 750 before a Subcommittee of the Senate Committee on Banking and Currency*, 88th Cong., 1st & 2d Sess. 500–501, 979 (1963–1964); *Hearings on S. 5 before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency*, 90th Cong., 1st Sess. [illegible]–878, 513, 699 (1967); *Hearing on H.R. 11601 before the Subcommittee on Consumer Affairs of the House Committee on Banking and Currency*, 90th Cong., 1st Sess. 590–591, 596, 802, [illegible]–826 (1967).

[14] See, *e.g.*, note 13 *supra*; the following statement by Senator Proxmire in *Senate Hearings on S. 5*, *supra* note 13, at 513 ("I see, then what you are saying is that at Foyes you don't pay a carrying charge of any kind. Foyes offers free payment accounts without interest. Obviously what Foyes is doing is burying the charge and [sic] [in] the cost of the merchandise."); and *House Hearings on H.R. 11601*, *supra* note 13, at 536 (Rep. Williams: "credit isn't free under any circumstances").

[15] See, *e.g.*, *Senate Hearings on S. 1740*, 87th Cong., 1st Sess., *supra* note 13, at 381 (Senator Proxmire).

However, although a creditor might not be required to disclose finance charges if these were concealed in increased prices, this did not mean the creditor would have no obligation to disclose other relevant information, such as the cash price and the total amount to be financed. Senator Douglas, who had been the principal proponent of the Act, replied as follows to Senator Bennett's claim that it would be impossible to prevent the burying of finance charges: [16]

> Senator DOUGLAS. I would like to call to your attention, Senator, for purposes of the record, that this bill does not provide for judgment solely on the basis of the two, annual interest rate or the total finance charges. It also provides that there shall be a statement of the cash price or delivery price of the property or service to be acquired. Both things are to be stated, price and finance charges, and the judgment of the consumer can be on the basis of both of these factors, not merely on one alone;

[16] *Senate Hearings on S.* 1740, 87th Cong., 1st Sess., *supra* note 13, at 447-448.

Others made the same point with respect to buried finance charges. See, *e.g.*, *id.*, at 563 (R. C. Morgan, President, Credit Union National Association: "And if there is a separate charge for credit, a price for that charge. *In any event, the customer, the buyer, can find out and tell exactly what the total cost, including the credit, be it concealed or otherwise, is going to be. This I think, is what is good about this legislation.*") (emphasis added); *House Hearings on H.R. 11601, supra* note 13, at 825-826 (Rep. Sullivan: If the merchant conceals the cost of credit by raising the purchase price and the consumer nevertheless buys "at least he knows what he is doing and he is doing it with his eyes open. This is what we are trying to accomplish in this legislation.").

> and if a merchant tries to have a low finance charge and bury it in a high cash price or delivered price, then the purchaser can shop on price just as much as on the finance charges.

In sum, it was generally assumed that whenever a merchant extended credit and purported to impose no finance charges it simply meant that the cost of credit had been absorbed in the price of the goods or services. But this did not relieve the creditor of his duty to disclose; although he might not have to revise his pricing scheme in order to differentiate the cost of credit from the price of the goods, he nevertheless had to tell the consumer the other information set forth in the Act.[17]

B.

THE BOARD'S FOUR INSTALLMENT RULE, WHICH CLARIFIES THE SCOPE OF THE ACT, EFFECTUATES ITS PURPOSE AND IS THEREFORE VALID UNDER SECTION 1604

It is against this background of legislative history and the provisions of this Act that the Federal Reserve Board promulgated the "four installment rule."[18] Under the Board's Regulation Z, a "creditor" subject to the disclosure rules is anyone who regularly ex-

[17] That identifiable finance charges are not the *sine qua non* of the obligation to disclose is further indicated by the fact that the disclosure requirements are specifically applicable to certain types of leases and bailments where the bailee or lessee is given an option to buy—transactions which, by their very nature, do not involve identified finance charges. 15 U.S.C. 1602(g). As with "no-charge-for-credit" installment sales, Congress believed that this was simply another way of deferring payment and that finance charges would therefore be present, although imposed indirectly and not stated.

tends "consumer credit," 12 C.F.R. 226.2(m), and "consumer credit" means the extension of credit where a finance charge is imposed or where, pursuant to an agreement, the purchase price "is or may be payable in more than four installments." 12 C.F.R. 226.2(k). Thus, "no-charge-for-credit" vendors must disclose other pertinent information when payment is made in more than four installments, even if finance charges are not identifiable.

Before so exercising its rulemaking authority, the Board established, pursuant to Section 1609 of the Act, 15 U.S.C. 1609, an advisory board of 20 members, representing "retailer, lender, and consumer groups in all sections of the country." [18] In September 1968, after careful study with the advisory board's assistance, the Board issued a draft of proposed regulations and later received more than 1200 comments and suggestions about the draft from industry and consumer groups, and others, including state and federal agencies.[19] In light of these comments, the Board published and later promulgated Regulation Z with the "four installment rule." [20]

The reasons for the Board's action are clear. The Board knew, as the hearings on the Act had revealed, that vendors could easily evade their disclosure obligations by including finance charges in the price of

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[18] *Hearings on Consumer Credit Regulations before the Subcommittee on Consumer Affairs of the House Committee on Banking and Currency*, 91st Cong., 1st Sess. 378 (1969) (statement of J. L. Robertson, Vice Chairman, Board of Governors of the Federal Reserve System).

[19] *Id.* at 379.

[20] 34 Fed. Reg. 2002 (1969).

the goods or services. The Board's answer to the problem—the four installment rule—effectuates the "central objective [of the Act] of providing full information to consumers''[illegible] and clarifies the scope of the Act with respect to "no-charge-for-credit'' practices.[illegible] The Committee Reports indicate that Congress defined creditors as those who extend credit and require a finance charge, 15 U.S.C. 1602(f), in order to exclude from coverage only deferred-payment sales that are essentially cash transactions. Thus, "the disclosure

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[illegible] S. Rep. No. 392, 90th Cong., 1st Sess. 2 (1967); see also 15 U.S.C. 1601.

[illegible] See statement of J. L. Robertson, Vice Chairman of the Board of Governors, Federal Reserve System, *Hearings on Consumer Credit Regulations*, *supra*, note 18, at 380–381:

> Another less troublesome problem involves credit extended "without charge." The act defines creditors as persons who "regularly extend or arrange for the extension of credit for which the payment of a finance charge is required." In many cases creditors claim to make no finance charge, although in every other respect they regularly extend consumer credit. Take, for example, the merchant who advertises watches for a dollar down, and a dollar a week, with no indication of how many dollars are required to pay for the watch. There is little doubt that he is in fact, collecting a finance charge, included but not identifiable in the cash price. And it seems clear that Congress intended to reach advertising of this kind.
>
> Accordingly, the regulation defines "consumer credit" to include credit payable in more than four installments even though no finance charge is expressly imposed. Thus, the advertising and disclosure provisions apply to this type of credit except for those provisions that cannot be complied with because the finance charge cannot be identified. In the example given above, the merchant would have to state the price of the watch and give particulars as to the payment schedule, even though he could not give the amount of the finance charge expressed as an annual percentage rate.

requirement would not apply to transactions which are not commonly thought of as credit transactions, including trade credit, open-account credit, 30-, 60-, or 90-day credit, etc., for which a charge is not made."[33] Beyond this, however, Congress believed that finance charges—identified or not—would be present in longer term installment sales[34] since the costs of money, the costs of collecting overdue amounts, the costs of credit investigations, and so forth would be involved.

Thus, "finance charge" is defined in the Act as "the sum of all charges, payable *directly or indirectly* by the person to whom the credit is extended and imposed *directly or indirectly* by the creditor as an incident to the extension of credit." 15 U.S.C. 1605(a) (emphasis added).[35] And the general disclosure requirements of the Act are for the benefit of "each person to whom consumer credit is extended and upon whom a finance charge *is or may be* imposed," 15 U.S.C. 1631 (emphasis added)—which indicates that it is sufficient that the nature of the transaction renders the presence of such a charge likely.

The Board's four installment rule thus makes clear what is implicit, if not explicit, in the Act itself: that

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[33] S. Rep. No. 392, 90th Cong., 1st Sess. 14 (1967); H.R. Rep. No. 1040, 90th Cong., 1st Sess. 25 (1967). In light of these comments and since most installment purchases involve monthly payments, the Board limited its rule to credit transactions payable in more than four installments.

[34] See pp. 15–16 *supra*.

[35] See S. Rep. No. 392, 90th Cong., 1st Sess. 8 (1967) (the annual rate of finance charge is "a composite rate which includes all charges incident to credit including interest").

even if they do not identify a finance charge, creditors are still subject to the other disclosure requirements.[38] In the language of Section 1604, it "effectuate[s] the purposes of" the Act by making a reality the Act's promise "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." 15 U.S.C. 1601. It assures all credit customers that they will at least be informed of such important credit information as the cash price, the number and amount of payments, default or delinquency charges, any security interest held by the creditor, and the amount to be financed.[39] 15 U.S.C. 1638.

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[38] On the basis of the legislative history, the Board's position is that if the cost of extending credit is not identifiable, the amount of any "finance charge" need not be disclosed. See note [illegible] *supra*. In such situations, a creditor's violation of the other applicable disclosure requirements would make him liable for the minimum statutory penalty of $100. 15 U.S.C. 1640(a)(1).

[39] That Congress knew the importance of informing the consumer of the total installment price is shown by the specific requirement in 15 U.S.C. 1638 that the creditor disclose this. See *Senate Hearings on S. 1740*, 87th Cong., 1st Sess., *supra*, note 18, at 117, which contains the following colloquy:

Mr. BLACK. Another point that should be made here, too, is that when people buy on time, what they frequently will ask is: What is it going to cost me a month?

Senator BENNETT. That is right.

Mr. BLACK. In many instances, I gather they do not bother to add it all up and find out what the total cost would be. Very often, they do, but that is the main concern of people, in many instances: What is it going to cost me a month?

Senator BENNETT. That is right.

Mr. BLACK. When you think about it that way, this monthly charge, sometimes it adds up to more than the

C.

THE BOARD ALSO VALIDLY EXERCISED ITS RULEMAKING AUTHORITY UNDER SECTION 1604 BECAUSE THE FOUR INSTALLMENT RULE IS NECESSARY TO PREVENT EVASION OF THE ACT

The four installment rule is "in the judgment of the Board * * * necessary or proper * * * to prevent circumvention or evasion" of the Act[28]—another, separate basis for the Board's exercise of rulemaking authority under Section 1604. Without the rule, creditors could avoid their obligation to disclose by simply raising their selling price and ostensibly discontinuing charging for credit, thereby exempting themselves from coverage because they do not impose finance charges. See 15 U.S.C. 1602(f), 1631, 1638.[29] This

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buyer can afford. I think, unfortunately, situations arise as a result of that.

See also *House Hearings on H.R. 11601*, *supra* note 13 at 1176, where Senator Robert F. Kennedy pointed out that "The most shocking cases of overreaching are generally of poor people, who cannot afford a down payment, are attracted by low monthly payments, and are unsophisticated about the total cost they will end up paying."

[28] See note 22 *supra*.

[29] In addition to the disclosure requirements of the Act, Section 1635 grants the consumer a three-day right of rescission when he enters into a credit transaction involving a security interest in his residence. This provision was inserted in the Act partially as a result of overreaching by some home improvement contractors. 114 Cong. Rec. 1611 (1968). Should the more than four installment rule be held invalid, such creditors could, conceivably, bury their finance charges to avoid giving consumers these rescission rights, as well as the Truth in Lending disclosures. Moreover, it could be argued that the prohibitions against "bait" advertising in Section 1662 of the Act would then not be applicable.

would bring about the ironic consequence that the less the creditor tells his customers the more easily he can evade his duty under an Act passed for the purpose of providing consumers with full information. Although competition from other sellers with lower cash prices might deter this practice in middle class neighborhoods, where a large segment of consumers buy on a cash basis, there would be no such deterrence in poorer areas where the vast majority of consumers buy on credit;[30] indeed, during the hearings Congress heard evidence that this practice already was prevalent.[31] As the court held in *Strompolos* v. *Premium Readers Service*, 326 F. Supp. 1100, 1103 (N.D. Ill.), the Board's four installment rule is authorized by the Act and is "not only sensible but also necessary to prevent the Truth in Lending Act from becoming a hoax and delusion upon the American public."

Respondent has contended that despite the need to prevent circumvention of the Act, the Board had no authority to promulgate the rule because it covers some transactions that the Act itself might not reach—that is, credit transactions payable in more than four installments where the consumer does not in fact pay a finance charge directly or indirectly. Even assuming that such transactions are theoretically possible, although Congress assumed otherwise as a practical matter,[32] this is not a basis for striking down the rule. As Mr. Justice Holmes stated for the Court in *West-*

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[30] See, *e.g.*, Caplovitz, *The Poor Pay More*, 12–48, 98, 147–150 (1963), and note 27 *supra*.

[31] See note 12 *supra*.

[32] See p. 15 *supra*.

fall v. United States, 274 U.S. 256, 259, "when it is necessary in order to prevent an evil to make the law embrace more than the precise thing to be prevented it may do so." See also *North American Co. v. Securities and Exchange Commission,* 327 U.S. 686, 710-711. Congress recognized this in Section 1604, when it authorized the Board to make "adjustments and exceptions for any class of transactions" in order to prevent evasion of the Act. See *Gemsco, Inc. v. Walling,* 324 U.S. 244. This must mean that for credit transactions with no identified finance charges the Board had authority to promulgate a general rule to prevent circumvention even if the rule embraces some transactions that the provisions of the Act might not, on their face, reach.

D.

THE BOARD'S REGULATION ALSO IS VALID BECAUSE IT FACILITATES COMPLIANCE WITH THE ACT—ANOTHER BASIS FOR RULEMAKING UNDER SECTION 1604

The Board also reasonably concluded that the four installment rule was necessary and proper "to facilitate compliance" with the Act—still another independent basis for rulemaking under Section 1604. As the Committee Reports state, one of the main methods of enforcing the Act is through private civil actions.[26] However, if in "no-charge-for-credit" transactions the creditor's duty to disclose turned on whether the consumer could show the actual existence of buried finance

[26] See S. Rep. No. 392, 90th Cong., 1st Sess. 9 (1967) ("The enforcement of the bill would be accomplished largely through the institution of civil actions authorized under section 7 of the bill."); H.R. Rep. No. 1040, 90th Cong., 1st Sess. 19 (1967).

charges as a component of the price of the goods, there would be great difficulties in securing compliance.

Disclosure of all required information is to be made at the outset, when the presence of a finance charge may not be apparent; the creditor is not to await the consumer's discovery of hidden charges before fulfilling his disclosure obligations. The very purpose of the Act is to relieve consumers of the substantial burden of discovering such things so that they will be assured of having sufficient information to decide whether to enter into the credit transaction.

In addition, if each transaction had to be dissected after the fact in order to determine the existence of buried finance charges, there would be endless legal disputes over bookkeeping practices and other matters far-removed from the central purposes of the Act. The Board justifiably rejected any such approach in light of the great difficulties in administration and the lack of uniformity that would be bound to arise, which would not only frustrate the Act's goal of informing consumers, but also would leave creditors without any clear and easily understandable rule to follow in "no-charge-for-credit" transactions.[24]

[24] Sections 1663 and 1664, 15 U.S.C. 1663, 1664, generally provide that if a specific credit term is advertised, for example, "ten dollars down," the creditor must give additional credit terms in his advertisement to inform fully prospective customers of his credit plan. In the absence of the four installment rule, creditors who extend long term credit that nominally did not involve a finance charge might advertise such specific terms without complying with the more complete advertising requirements applicable to covered creditors. Since the advertisement would not, itself, indicate either to enforcement agencies or to competitors why a particular creditor's advertising did not com-

This case itself illustrates the wisdom of the Board's rule. If FPS had complied with the Act and the regulations thereunder, it would have informed Mrs. Mourning of, among other things, the "cash price" of the magazine subscriptions. See 15 U.S.C. 1638. But FPS did not do this, claiming that the Act did not apply to it because it imposed no finance charges. Yet in its brief in opposition to the petition for a writ of certiorari, at p. 9, note **, FPS admitted for the first time that it gave a discount to cash customers, which is simply another way of saying that persons who buy on time are charged for something more. And that something is at least part of what Congress defined as a finance charge, imposed "indirectly." **

Of course, Mrs. Mourning could not have known of this difference in price for cash and time purchases at the time she signed her contract. And perhaps FPS actually thought it had not imposed any finance charges, although all indications now are that it did. But one of the major reasons for the four installment rule is that creditors, as well as consumers, will clearly know what is required with respect to disclosure

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ply with the Act's requirements, the Board and the Federal Trade Commission foresee substantial administrative problems in policing credit advertising and encouraging voluntary compliance should the rule be invalidated.

** See note 11, *supra*, indicating that giving a discount to cash customers while claiming to time customers that no finance charges are being imposed would be a violation of the Act.

before the transaction is consummated and that compliance with the Act will thereby be facilitated.

In sum, we believe that the Bard's action in promulgating the regulation in question is an example of the administrative process working at its best. After thorough study and consideration, the Board dealt with the problem of buried finance charges and the potential for evasion of the Act by setting down a clear and consise rule upon which both consumers and creditors can confidently rely in determining their rights and obligations under that Act. Where, as here, Congress has enacted remedial legislation and conferred broad rulemaking authority upon an expert agency, the agency's regulation should be upheld if it is "reasonably related to the purposes of the enabling legislation"[36] and "within the bounds of [its] administrative powers."[37] And to the extent that the Board's rule represents its interpretation of the provisions and purposes of the Act, this construction is entitled to great weight,[38] particularly since we deal here with a new statute and with rules promulgated by the agency charged with the duty of setting it in

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[36] *Thorpe* v. *Housing Authority*, 393 U.S. 268, 280–281; see *American Trucking Associations, Inc.* v. *United States*, 344 U.S. 298, 308–313.

[37] *American Telephone & Telegraph Co.* v. *United States*, 299 U.S. 232, 236.

[38] See *National Broadcasting Co.* v. *United States*, 319 U.S. 190; *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315.

motion.[39] Under these standards, the court below erred in holding that the Board had exceeded its authority.[40]

II.

THE FOUR INSTALLMENT RULE DOES NOT VIOLATE DUE PROCESS

The court of appeals also held that the four installment rule establishes a "conclusive presumption" that

[39] See *Udall* v. *Tallman*, 380 U.S. 1, 16; *Power Reactor Development Co.* v. *International Electricians*, 367 U.S. 396.

The rule that the contemporaneous construction of a statute by the administering agency is entitled to great weight has a long history. See *Edward's Lessee* v. *Darby*, 12 Wheat. 206, 210: "In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect." The rule is based on the idea that contemporaneous constructions in regulations often reflect the general understanding of law at the time it was enacted by those who took part in the enacting process and thus is evidence of legislative intent. Moreover, the rule allows persons affected by the regulation to rely upon it with the knowledge that the courts will probably uphold the agency's action if, in the future, the regulation is challenged in a lawsuit; thus, certainty and predictability of the law are promoted.

[40] The court below ignored the important remedial aspect of Truth in Lending and instead characterized the Act as penal because there are penal sanctions for willful and knowing violations, 15 U.S.C. 1611. (Pet. App. 17a). For this reason, it interpreted the statute narrowly. However, the penal provisions are not involved in this case, and more important, the Truth in Lending Act and the four installment rule do not involve the problem of lack of notice that dictates narrow construction of penal statutes. See *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453; *McBoyle* v. *United States*, 283 U.S. 25, 27 (Mr. Justice Holmes). In any event, when a remedial statute is sought to be enforced in a civil proceeding, it is to be interpreted broadly to effectuate its purpose, not narrowly because it also has criminal sanctions. *Securities and Exchange Commission* v. *Joiner Corp.*, 320 U.S. 344, 353–355.

all creditors impose finance charges in consumer credit transactions payable, pursuant to an agreement, in more than four installments. After so characterizing the regulation, the court invoked the due process clause of the Fifth Amendment to strike it down (Pet. App. 21a to 23a).

But whether the substantive rule of law embodied in the Board's regulation deprives FPS and other creditors of due process does not depend on labels;[41] the days of *Lochner* v. *New York,* 198 U.S. 45, and *Adkins* v. *Children's Hospital,* 261 U.S. 525, and other similar decisions are long passed.[42] Instead, when economic regulation of business is in question, the standard of review is that stated by this Court in *West Coast Hotel Co.* v. *Parrish,* 300 U.S. 379, 391: "regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process." See also *Ferguson* v. *Skrupa,* 372 U.S. 726, 730–733.

The four installment rule meets that test. There is a rational basis for the classification established by the regulation and the regulation is reasonable in light of the relative benefits and burdens it creates. The Board, as well as Congress, knew that finance charges are

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[41] See Mr. Justice Holmes, joined by Mr. Justice Brandeis and Mr. Justice Stone, dissenting in *Schlesinger* v. *Wisconsin,* 270 U.S. 230, 241; and Mr. Justice Stone, joined by Mr. Justice Brandeis (Mr. Justice Cardozo did not participate in the case), dissenting in *Heiner* v. *Donnan,* 285 U.S. 312, 332, 349 ("Unless the line [the regulation] draws is so wide of the mark as palpably to have no relation to the end sought, it is not for the judicial power to reject it and substitute another, or to say that no line may be drawn.").

[42] See Jackson, *The Struggle for Judicial Supremacy* 197–[illegible] (1941).

typically involved in consumer credit transactions[43] because, when payment is deferred, the seller incurs costs and those costs are passed on to the consumer. Even if some creditors in fact give "free" credit, the burden of disclosure is minimal while the benefits of the Board's prophylactic rule are considerable.

As we discussed above, see pp 22 to 27, without the four installment rule there would be substantial danger that the Act could be easily circumvented or evaded; moreover, transaction-by-transaction determinations regarding the existence of unidentified finance charges would frustrate the purposes of the Act and, in the Board's view, would be unworkable. In short, the important policy considerations underlying the Board's regulations far outweigh whatever inconvenience it may cause creditors. Since the regulation has a rational basis and is reasonable, it satisfies the substantive requirements of due process.[44]

Thus, even if the four installment rule is properly characterized as a "conclusive presumption," it is nevertheless constitutional under the Fifth Amendment. "[T]he creation by law of such presumptions is after all but an illustration of the power to classify." *Jones* v. *Brim*, 165 U.S. 180, 183. See also *Martin* v. *City of Struthers*, 319 U.S. 141, 154 (Frankfurter, J. concurring). And this Court, as well as the courts of appeals, including the Fifth Circuit, have often upheld the validity of "conclusive presumptions." See,

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[43] See pp. 115–116, *supra*.

[44] Cf. *Metropolis Theatre Co.* v. *City of Chicago*, 228 U.S. 61, 69–70.

e.g., Jones v. *Brim,* 165 U.S. 180; *Hawkins* v. *Bleakly,* 243 U.S 210; *Ferry* v. *Ramsey,* 277 US. 88; *City of New Port Richey* v. *Fidelity & Deposit Co.,* 105 F. 2d 348 (C.A. 5); *United States* v. *Jones,* 176 F. 2d 278 (C.A. 9); *Gratz* v. *Claughton,* 187 F. 2d 46 (C.A. 2); *Jensen* v. *United States,* 326 F. 2d 891 (C.A. 9); *Shanahan* v. *United States,* 447 F. 2d 1082 (C.A. 10).

The *Shanahan* case, *supra,* is particularly apposite. There, the question was whether Section 483 of the Internal Revenue Code (26 U.S.C. 483) violated due process because it created, in effect, a conclusive presumption that when goods are purchased on an installment basis, a portion of the purchase price is interest. The court upheld the statute because it was anchored in the "incontrovertible fact" that "[u]nless clearly intended as a gift, a seller will not sacrifice interest on deferred installment purchase payments" and because it was "a reasonable method of preventing avoidance of ordinary income tax represented by interest payments on installment sales contracts." 447 F. 2d at 1084. Similar factual considerations obtain here.

Schlesinger v. *State of Wisconsin,* 270 U.S. 230, and *Heiner* v. *Donnan,* 285 U.S. 312, relied upon by the court below, are distinguishable. As this Court pointed out in *Helvering* v. *City Bank Farmers Trust,* 296 U.S. 85, and as the Tenth Circuit noted in *Shanahan,* the presumptions involved in *Schlesinger* and *Heiner* were invalidated because, in the Court's view, they created unreasonable classifications. In those cases, the Court saw no rational basis for rules that all gifts

given within two years (*Heiner*) or six years (*Schlesinger*) of the donor's death were made in contemplation of death. Moreover, the tax burden on the individual as a result of the rule could have been considerable. Presumably, the result would have been the same even if the rules had been written without the presumptions, merely requiring that the gifts given within the prescribed period prior to the donor's death must be taxed as part of the donor's estate.[44] However, to the extent that *Heiner* and *Schlesinger* stand for the proposition that "conclusive presumptions" perforce violate the Fifth Amendment, these cases are contrary to *West Coast Hotel, supra,* and the other cases we have cited, pp. 29–31 *supra*, and should be overruled.[45]

In sum, whether the four installment rule is viewed as a conclusive presumption or as simply a substantive rule of law, it is rationally founded pursuant to the Act and is reasonable in light of the important policies it serves. The Fifth Amendment requires no more and the court below erred in holding the regulation unconstitutional.

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[44] *Stanley* v. *Illinois*, No. 70–5014, decided April 3, 1972, in which this Court struck down a state dependency statute conclusively presuming parental unfitness of unwed fathers and depriving them of custody of their children without a hearing, is similarly distinguishable. In that case, the private interest of a man in the children he sired and raised was considerable and the state offered no countervailing governmental interest supporting the statute. Moreover, unlike *Stanley*, which involved essential family relationships, this case deals with regulation of business activity.

[45] See also note 41 *supra*.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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JULY 1972.

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MAY 1972.

APPENDIX

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Truth In Lending Act, 15 U.S.C. 1601–1665, provides in relevant part:

> § 1601. Congressional findings and declaration of purpose.
>
> The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.

§ 1602. *Definitions and rules of construction.*

* * * * *

(e) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) The term "creditor" refers only to creditors who regularly extend, or arrange for the extension of, credit for which the payment of a finance charge is required, whether in connection with loans, sales of property or services, or otherwise. The provisions of this subchapter apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

(g) The term "credit sale" refers to any sale with respect to which credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(h) The adjective "consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, household, or agricultural purposes.

* * * * *

§ 1604. *Rules and regulations.*

The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain such classifications,

differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

§ 1605. Determination of finance charge.

(a) Definition.

Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

(1) Interest, time price differential, and any amount payable under a point, discount, or other system or additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligator's default or other credit loss.

* * * * *

§ 1631. General requirement of disclosure.

(a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed, the information required under this part.

(b) If there is more than one obligor, a creditor need not furnish a statement of information required under this part to more than one of them.

§ 1638. *Sales not under open end credit plans*

(a) Required disclosures by creditor.

In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is applicable:

(1) The cash price of the property or service purchased.

(2) The sum of any amounts credited as downpayment (including any trade-in).

(3) The difference between the amount referred to in paragraph (1) and the amount referred to in paragraph (2).

(4) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

(5) The total amount to be financed (the sum of the amount described in paragraph (3) plus the amount described in paragraph (4)).

(6) Except in the case of a sale of a dwelling, the amount of the finance charge, which may in whole or in part be designated as a time-price differential or any similar term to the extent applicable.

(7) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed $5 and is applicable to an amount financed not exceeding $75, or

(B) which does not exceed $7.50 and is applicable to an amount financed exceeding $75.

A creditor may not divide a consumer credit sale into two or more sales to avoid

the disclosure of an annual percentage rate pursuant to this paragraph.

(8) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness.

(9) The default, delinquency, or similar charges payable in the event of late payments.

(10) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(b) Form and timing of disclosure.

Except as otherwise provided in this part, the disclosures required under subsection (a) of this section shall be made before the credit is extended, and may be made by disclosing the information in the contract or other evidence of indebtedness to be signed by the purchaser.

(c) Timing of disclosure on mailed or telephoned orders.

If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the deferred payment price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due.

(d) Timing of disclosure in cases of an addition of a deferred payment price to an existing outstanding balance.

If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addi-

tion of the deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) of this section for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest price shall be deemed first paid for.

§ 1640. Civil liability.

(a) Failure to disclose.

Except as otherwise provided in this section, any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required under this part to be disclosed to that person is liable to that person in an amount equal to the sum of

(1) twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than $100 nor greater than $1,000; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

* * * * *

The regulations of the Federal Reserve Board under the Truth In Lending Act, 12 C.F.R. 226, provide in relevant part:

§ 226.2 Definitions and rules of construction.

* * * * *

(k) "Consumer credit" means credit offered or extended to a natural person, in which the money, property, or service which is the subject of the transaction is primarily for personal, family, household, or agricultural purposes and for which either a finance charge is or may be imposed or which pursuant to an agreement, is or may be payable in more than four installments. "Consumer loan" is one type of "consumer credit."

(l) "Credit" means the right granted by a creditor to a customer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor. (See also paragraph (bb) of this section.)

(m) "Creditor" means a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit.

* * * * *

§ 226.8 Credit other than open end—specific disclosures.

(a) *General rule.* Any creditor when extending credit other than open end credit shall, in accordance with § 226.6 and to the extent applicable, make the disclosures required by this section with respect to any transaction consummated on or after July 1, 1969. Except as provided in paragraphs (g) and (h) of this section, such disclosures shall be made before the transaction is consummated. At the time disclosures are made, the creditor shall furnish the customer with a duplicate of the instrument or a statement by which the required disclosures are made and on which the creditor is identified.

All of the disclosures shall be made together [illegible] either

(1) the note or other instrument evidencing the obligation on the same side of the page [illegible] above or adjacent to the place for the customer's signature; or

(2) One side of a separate statement which identifies the transaction.

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